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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CAPACITORS ANTITRUST
LITIGATION

This Document Relates To:
DIRECT PURCHASER PLAINTIFFS
ACTION

Master File No. 3:14-cv-03264-JD
MDL No. 2801

**JOINT PROPOSED VOIR DIRE
QUESTIONS**

Trial Date: March 2, 2020
Time: 9:00 a.m.
Place: Courtroom 11, 19th Floor
Hon. James Donato

In addition to the standard background questions, Direct Purchaser Plaintiffs (“DPPs”) and the undersigned Defendants respectfully request that the Court ask the following voir dire questions. All disputed questions are identified and DPPs and Defendants have provided separate statements in support of their positions below.

1. *Which city/neighborhood do you live in? [Disputed by Defendants]*
2. *Do you speak/understand any languages other than English? [Disputed by Defendants]*
3. *What is the highest level of education you completed? [Disputed by Defendants]*
4. *What was your major/area of study and any degrees you received? [Disputed by Defendants]*
5. *What is your employment status? [Disputed by Defendants]*
 - a. *Who is your current (or past) employer? [Disputed by Defendants]*
 - b. *What is (was) your job title and what are/were your job duties? [Disputed by Defendants]*
 - c. *What other types of work have you done in the past? [Disputed by Defendants]*
6. *What is your marital status? [Disputed by Defendants]*
7. *If you are married, partnered, or have a significant other, what does he or she do for a living? [Disputed by Defendants]*
8. *Do you have any children? [Disputed by Defendants]*
 - a. *What are their ages? [Disputed by Defendants]*
 - b. *What are their occupations (if applicable?) [Disputed by Defendants]*
9. Are there any other adults in your household besides your spouse/partner/children? If so, what are their relationships to you and occupations?
10. What social, political, charitable, trade or other organizations do you belong to?
11. Have you, a family member, or someone close to you ever had any training, courses or worked in or around the following areas?
 - a. criminal law or law enforcement
 - b. economics and economic forecasting
 - c. electronics
 - d. engineering

- 1 e. finance
- 2 f. legal, including regulatory compliance of antitrust law
- 3 g. manufacturing, marketing or sales, including manufacturing or sale of
- 4 capacitors
- 5 h. mathematics or statistics
- 6 i. pricing, including the pricing of capacitors
- 7 12. Have you or anyone close to you ever worked in the manufacture, design, sale, or
- 8 marketing of aluminum, tantalum or film capacitors?
- 9 13. Have you or anyone close to you ever had any personal or business dealings with
- 10 Japanese companies?
- 11 14. Have you or anyone close to you ever been involved with an investigation for any
- 12 claims of anti-competitive behavior (e.g. price fixing, collusion, monopoly, etc.)?
- 13 15. Has any company that you or anyone close to you work for ever been involved with
- 14 an investigation for any claims of anti-competitive behavior (e.g. price fixing,
- 15 collusion, monopoly, etc.)?
- 16 16. Have you or anyone close to you ever had any experiences with the U.S.
- 17 Department of Justice?
- 18 17. Do you or anyone close to you hold any negative or positive opinions about the U.S.
- 19 Department of Justice?
- 20 18. Have you ever served on a jury before?
- 21 a. What type of case?
- 22 b. When?
- 23 c. Did the jury reach a decision?
- 24 d. Were you the presiding juror?
- 25 19. Have you or anyone in your family ever been sued by anyone, even in small claims
- 26 court?
- 27 20. Have you or anyone in your family ever sued anyone, even in small claims court?
- 28 21. Have you or anyone in your family ever testified as an expert in a court case?
22. Have you or anyone close to you ever worked for a company or organization that
- you feel was sued unfairly?
23. Have you or anyone close to you ever been a witness, given a deposition and/or
- testified in any proceeding?
24. Have you or has anyone close to you ever worked in any other law enforcement?

1 a. What was the entity?

2 b. When?

3 25. Have you or has anyone close to you ever worked for the court system, law firms, or
4 legal organization?

5 a. What was the entity?

6 b. When?

7 26. Do you support or oppose caps or limits on the amount of money juries can award in
8 civil cases?

9 27. Do you have any negative or positive opinions or concerns about consumer class
10 action lawsuits?

11 28. Have you ever received a notice about a class action lawsuit?

12 a. What was it about?

13 b. Did you fill out the form?

14 c. Did you ever receive any money from the case?

15 29. Do you believe that businesses today are faced with too many or too few
16 government regulations?

17 30. *How many of you would say you enjoy working with math and numbers? [Disputed*
18 *by Defendants]*

19 31. *Who here would say they prefer complex problems compared to simple problems?*
20 *[Disputed by Defendants]*

21 32. *How many of you like situations that require lots of thinking? [Disputed by*
22 *Defendants]*

23 33. Do you have any ethical, religious, political or other beliefs or opinions that would
24 affect your ability to be a juror in this case?

25 34. Do you believe it is unfair for foreign based companies to be subjected to U.S. laws
26 when doing business in the U.S.?

27 35. *Have you ever been a member of a trade association? [Disputed by DPPs]*

28 a. *What was the association? [Disputed by DPPs]*

b. *What did you do as a member? [Disputed by DPPs]*

36. *Have you ever worked for an employer whose main competitors were foreign*
corporations? [Disputed by DPPs]

a. *Who was your employer? [Disputed by DPPs]*

b. *Who were your employers' competitors? [Disputed by DPPs]*

- 1 c. *Did you form an impression about your employers' foreign competitors?*
2 *[Disputed by DPPs]*
- 3 37. Do you believe that foreign companies compete unfairly against U.S. companies?
- 4 38. *Do you believe that corporations would knowingly break the law in order to protect*
5 *their profit? [Disputed by DPPs]*
- 6 39. *Do you believe that Asian companies conduct their business differently from U.S.*
7 *companies? [Disputed by DPPs]*
- 8 a. *What do you think is different? [Disputed by DPPs]*
- 9 40. *Do you have strong positive or negative opinions of Japanese companies or*
10 *business people? [Disputed by DPPs]*
- 11 41. Do you regularly post your opinions or reviews on social media websites or blogs?
- 12 42. *What news sources do you typically rely upon? [Disputed by DPPs]*
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DPPs' Statement in Support of Proposed Questions and Objections

Questions that Should be Included.

Questions 1-8. These seek basic demographic information regarding educational level, areas of study, employment, marital status, and information regarding children. This objective information is routinely obtained in voir dire and will help identify connections to the parties or counsel and potential conflicts of interest or bias. Plaintiffs respectfully include these questions, if not already included in the Court's standard questions.

Questions 30, 31, and 32 These ask questions about facility and experience with mathematics and other aspects of quantitative analysis. This case will involve testimony about complex business matters and testimony from economists and statisticians. A juror who cannot or will not address these matters is potentially unfair.

Questions that Should not be Included.

Question 35. This seeks unnecessary information about experiences or attitudes with respect to "trade associations." In addition to being confusing and unintelligible (i.e., what is a "trade association" in this context), this question is argumentative and is being used to precondition jurors regarding the legality of trade associations.

Question 36. This seeks unnecessary information regarding experiences with or attitudes about foreign corporations. In addition to being confusing and unintelligible (i.e., what is "foreign" in this context), this question is prejudicial and potentially inflammatory. Also, Defendants' counsel is attempting to pretry the case and plant substantive legal arguments in voir dire.

Question 37. This seeks unnecessary information regarding potential juror beliefs and attitudes on the topic of whether "corporations would knowingly break the law in order to protect their profit?" This question is argumentative and is being used to precondition jurors regarding the profit motives of Defendants. Also, Defendants' counsel is attempting to pretry the case and plant substantive legal arguments in voir dire.

Question 38. This seeks information regarding beliefs or attitudes about differences in conduct of Asian and US companies. This question is argumentative and is being used to

1 precondition jurors regarding Asian businesses and in particular Japanese or Japanese
2 business people. This question is also prejudicial because it injects the issue of race. Also,
3 Defendants' counsel is attempting to pretry the case and plant substantive legal arguments
4 in voir dire.

5 **Question 42.** It is irrelevant what newspapers are read or other sources of information.

6 Access or use of media does not reveal useful information. It is also invasive and treads on
7 the potential jurors right to privacy.

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Defendants' Statement in Support of its Proposed Questions and Objections

Question Nos. 1-8 (Disputed by Defendants): Defendants object to DPPs

inclusion of these basic questions solely on the understanding that this Court has its own set of standard background questions relating to prospective juror demographics, living arrangements, employment, and prior jury service. Defendants submit to the Court's discretion on whether any of DPPs' questions are necessary.

Question Nos. 30-32 (Disputed by Defendants): Defendants object to DPPs

inclusion of these three questions as unhelpful and potentially demeaning to prospective jurors. The questions—which in essence ask the prospective jurors whether they: (a) like math, (b) prefer complex problems, and (c) like lots of thinking—do not appear to serve any justifiable purpose. While Defendants will not speculate as to whether DPPs seek to find or avoid jurors that like math, complexity, and thinking, Defendants believe such inquiries are improper. It is long established that “[t]he fundamental purpose of voir dire is to ‘ferret out prejudices in the venire’ and ‘to remove partial jurors.’” *United States v. Steele*, 298 F.3d 906, 912 (9th Cir. 2002); *see also Darbin v. Nourse*, 664 F.2d 1109, 1113 (9th Cir. 1981) (“The principal purpose of voir dire is to probe each prospective juror's state of mind to enable the trial judge to determine actual bias and to allow counsel to assess suspected bias or prejudice.”) These three questions do not have anything to do with ferreting out bias. They appear aimed purely at finding jurors most favorable to DPPs' case.

Question Nos. 35-36, 38-40, and 42 (Disputed by DPPs): Defendants submit that

these questions are appropriate and necessary. These are aimed at determining whether any prospective jurors harbor any particularly strong views that may indicate bias or an inability to evaluate the case upon the evidence presented. More specifically:

In question number 35, Defendants would like to identify any prospective jurors that are members of a trade association. The heart of DPPs' case relates to alleged conduct at various trade association meetings. Therefore, Defendants have a strong interest in identifying any prospective jurors that may be members of similar

1 organizations so that any potential bias or preconceived notions they may hold about
2 such groups can be assessed.

3 In question 36, Defendants seek to identify any prospective jurors who may have
4 employment experience where they felt they or their employer were subjected to
5 unfair business practices by a foreign competitor. This question is properly directed
6 and neutrally framed to root out any jurors that may be unduly influenced by their
7 past experiences and unlikely to be fair and impartial to the foreign corporations in
8 this case.

9 In question numbers 38-40 and 42, Defendants similarly seek to ferret out any
10 beliefs in prospective jurors that would indicate possible bias and prejudgment
11 against foreign competition, Asian companies and their business practices, or
12 corporations generally. Notably, DPPs do not object to question 41, which asks
13 whether prospective jurors regularly post to social media websites or blogs. Both
14 questions 41 and 42 go to identifying whether any prospective jurors might be prone
15 to forming judgments too quickly or predisposed to certain biased media narratives.
16 These questions serve the fundamental purpose of voir dire, and are not merely
17 directed at identifying favorable or unfavorable prospective jurors.

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